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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re ANTHONY C. et al., Persons Coming Under the Juvenile Court Law.

2d Juv. No. B263570 (Super. Ct. No. JV46938) (San Luis Obispo County)

SAN LUIS OBISPO COUNTY DEPARTMENT OF SOCIAL SERVICES.

Plaintiff and Respondent,

v.

ERNEST C.,

Defendant and Appellant.

Ernest C. ("Father") appeals an order of the juvenile court declaring that his two minor sons are adoptable and terminating his parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

On April 19, 2013, the San Luis Obispo County Department of Social Services ("DSS") detained minors Anthony C. and Nicholas C. due to the parents' incarceration and involvement with drugs, domestic violence, and homelessness. At the time, M.C. ("Mother") was incarcerated following her conviction for burglary and Father

¹ All further statutory references are to the Welfare and Institutions Code.

was prevented from contacting Mother and the children by a 10-year criminal protective order. On April 23, 2013, DSS filed a dependency petition alleging that Mother and Father failed to protect and provide for the children. (§ 300, subd. (b).) That day, Father was arrested and confined in county jail for driving under the influence, a crime he later described as "sip[ping] and cruis[ing]."

On April 26, 2013, the juvenile court detained the children and set the matter for a jurisdiction and disposition hearing. The court later permitted Father to have visitation with the children, subject to court-ordered modification of the criminal protective order.

On May 23, 2013, Mother and Father waived their rights regarding jurisdiction and disposition and submitted on DSS's recommendation of 12 months of family reunification services. DSS had placed Anthony, Nicholas, and their half-sibling, J., in a foster home, and stated that DSS was "committed to exhausting all resources and support options before considering separating [the children]."

Father's family reunification services plan required him to: participate in a domestic violence prevention program and parent education classes; obtain employment and stable housing; participate in drug and alcohol assessment and any recommended treatment; and submit to random drug tests, among other requirements.

By the time of the November 14, 2013, six-month review hearing, Father had complied with many aspects of his services plan. He had not consistently drugtested, however, and he had one positive alcohol and opiates test. The juvenile court ordered DSS to continue to provide reunification services to Father, and it set the matter for a 12-month review hearing.

At the time of the May 7, 2014, 12-month review hearing, Father was employed full-time and lived with his girlfriend and her children. DSS recommended that Father receive unsupervised visitation with his children and six additional months of reunification services. Anthony C. and Nicholas C. were living in the same foster home and were receiving counseling to improve their sibling relationship, among other

treatment goals. The juvenile court ordered DSS to continue to provide services to Father for an additional six months and to permit unsupervised visitation.

Approximately one month later, in May 2014, Father became intoxicated and committed acts of domestic violence against his girlfriend in the presence of his children. A neighbor had summoned police officers after Father pulled his girlfriend into her residence by her hair. The girlfriend later displayed her injuries to a DSS social worker. Anthony C. and Nicholas C. informed the DSS social worker that they were frightened by the assault; Nicholas C. locked himself in the bathroom and cried. Father minimized the incident by describing it as "only a misdemeanor."

On June 20, 2014, DSS requested that the juvenile court terminate family reunification services to Father. In its supporting report, DSS pointed out that Father had a long history of domestic violence and that, despite attendance at domestic violence prevention classes, he had not made the necessary changes to protect and care for his children.

On July 16, 2014, the juvenile court found that there was a change in circumstances and additional family reunification services were not in the children's best interests. The court then set the matter for a permanent plan hearing.

On November 9, 2014, DSS moved the children to separate homes, based in part on Anthony C.'s desire to remain in his current school where he was excelling. Father had consistent, supervised visits with the children, who enjoyed the visits but exhibited anxious behavior afterward.

On December 5, 2014, Father filed a modification petition requesting custody of his children with family maintenance services. (§ 388.) In support of his petition, Father stated that he was sober and had negative tests for drug or alcohol use. He also pointed out that he was participating in domestic violence prevention classes and anger management classes.

DSS resisted Father's modification petition and pointed out that he had previously participated in domestic violence prevention classes and anger management classes. DSS added that the children had expressed desires to be adopted and did not

request additional visits with Father. DSS reported that the children were happy and engaged in positive behavior after placement in separate foster homes.

Over four days during a two-month period, the juvenile court held a contested hearing regarding the modification petition and permanent plan.

The DSS visitation supervisor testified that Father visited the children consistently and behaved appropriately during the visits. The children separated easily from Father, however.

Father's probation office testified that Father was placed on formal probation with drug and alcohol conditions, including random drug testing and attendance at parent education and anger management classes. The probation officer stated that Father was compliant with his probation terms, but acknowledged that Father was not participating in drug or alcohol treatment.

The DSS adoption social worker testified that the children were in preadoptive homes. They were happy with the placements and wished to be adopted by their respective foster parents. The foster parents were committed to adoption, continued psychological therapy for the children, and sibling visitation.

The children's therapist testified that she met with the children weekly concerning their negative behaviors and their sibling relationship. The therapist opined that their sibling relationship had improved following placement in separate foster homes.

Father testified that he was employed and complying with his probation terms. He confirmed that he had not completed a drug or alcohol treatment program, however.

The juvenile court took judicial notice of the juvenile court file and the DSS service logs. It later ruled that granting Father's modification petition was not in the children's best interests, the children were adoptable, and the beneficial parental relationship exception and sibling relationship exception to adoption did not apply. The court found by clear and convincing evidence that the children were adoptable and it terminated parental rights.

Father appeals and contends that the juvenile court erred by: 1) finding that his sons are adoptable; and, 2) not applying the beneficial parental relationship exception or sibling exception to adoption. (§ 366.26, subd. (c)(1)(B)(i), (v).)

DISCUSSION

I.

Father argues that insufficient evidence supports the juvenile court's finding by clear and convincing evidence that Anthony C. and Nicholas C. are adoptable. (§ 366.26, subd. (c)(1).) He points to their ages (11 years and 6 years), their behavioral and emotional problems, and the short period of time (four months) that they have been in their prospective adoptive homes.

A finding of adoptability requires clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time. (*In re Michael G*. (2012) 203 Cal.App.4th 580, 589.) The question of adoptability considers the child's age, physical condition, and emotional health, among other factors. (*Ibid.*) In some cases, a child who otherwise might be considered unadoptable due to age, health, disability or emotional instability, is likely to be adopted because a prospective adoptive family has been identified as willing to adopt the child. (*In re Jose C*. (2010) 188 Cal.App.4th 147, 158.)

On review, we determine whether there is sufficient evidence from which the juvenile court could find clear and convincing evidence that the child is likely to be adopted within a reasonable time. (*In re Michael G., supra*, 203 Cal.App.4th 580, 589.) In this task, we do not reweigh the evidence, redetermine witness credibility, or indulge in inferences contrary to those drawn by the juvenile court. (*Ibid.*)

There is sufficient evidence from which a reasonable trier of fact could find by clear and convincing evidence that the children were likely to be adopted within a reasonable time. (*In re Zeth S.* (2003) 31 Cal.4th 396, 406 [review of adoptability finding].) Following their placement in separate foster homes, Anthony C. and Nicholas C. improved in their behavior, attitudes, relationships with each other and other children, and academic studies. Indeed, in the opinion of the DSS social workers and the

court-appointed special advocate volunteer, the children were thriving and adoptable. Their foster parents desired to adopt them and the children in turn desired adoption. Evidence of the children's sibling bond as well as the bond to their foster parents supports an inference that they have developed and are capable of developing personal relationships.

II.

Father contends that the "sibling relationship" exception to adoption precludes termination of his parental rights. (\S 366.26, subd. (c)(1)(B)(v).) He relies upon the significant relationship between Anthony C. and Nicholas C.

The "sibling relationship exception" to adoption applies where adoption would create a "substantial interference with a child's sibling relationship." (§ 366.26, subd. (c)(1)(B)(v).) In determining whether the exception applies, the juvenile court should consider the nature and extent of the sibling relationship, including a child's long-term emotional interest, as compared to the benefit of legal permanence through adoption. (*In re Michael G., supra*, 203 Cal.App.4th 580, 593.) Application of the exception is "rare." (*Ibid.*)

Father did not establish that the children's sibling relationship should preclude adoption as the permanent plan. Although the children have a sibling bond, their relationship engendered serious behavioral problems while living together. Following their placement in separate pre-adoptive homes, the children flourished emotionally and academically, and their sibling relationship strengthened. Moreover, the pre-adoptive families supported the sibling bond by participating in visitations and joint counseling. Sufficient evidence supports the juvenile court's finding that application of the sibling relationship exception to adoption here was not in the children's best interests.

III.

Father asserts that the "beneficial parental relationship" exception to adoption precludes termination of his parental rights. (\S 366.26, subd. (c)(1)(B)(i).) He points out that he consistently visited with the children, the visits were positive, and the

children looked forward to the visits. Father adds that he has been involved with the children for their entire lives.

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" due to an enumerated statutory exception. The "beneficial parental relationship" exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (In re I.R. (2014) 226 Cal.App.4th 201, 212.) "To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits." (In re Dakota H. (2005) 132 Cal.App.4th 212, 229.) The parent must establish the existence of a relationship that promotes the child's well-being to such a degree as to outweigh the well-being the child would gain in a permanent home with adoptive parents. (In re Jason J. (2009) 175 Cal.App.4th 922, 936.) Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (In re Jasmine D. (2000) 78 Cal.App.4th 1339, 1350.)

The exception requires proof of "a *parental* relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D., supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship exists where children in mother's care the majority of their lives].)

Father did not meet his evidentiary burden regarding this exception.

Although Father's visits were supervised and limited to one hour, he had difficulty in meeting the needs of each child. The children separated easily from Father following the visits, and they did not request additional visits. They also expressed desires to remain in

their pre-adoptive homes and to be adopted. The existence of the 10-year criminal restraining order precluding Father from contacting Mother or the children also implies that he has not always occupied a parental role in their lives. Moreover, DSS was concerned that due to Anthony C.'s role in "caretaking for his father," that a return to Father's custody would not be in Anthony C.'s best interests. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 [general rule that parental benefit exception applies only where parent has demonstrated that benefits to the child of continuing the parental relationship outweigh the benefits of adoption].)

The judgment (order) is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut, Deputy County Counsel, for Plaintiff and Respondent.